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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Andreas SCHABERT et al. Art Unit: 3782
Appln. No. : 10/712,131 Examiner: Gary E. ELKINS
Filed : November 13, 2003 Confirmation No.: 8184
For : RELOCKABLE, RECTANGULAR-SHAPED FOLDING BOX WITH
LATERAL OPENING

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This appeal is from the Examiner's final rejection of claims 12-14, 16-18, 22-26 and 28-31 as set forth in the Final Office Action of March 26, 2007. A Notice of Appeal, in response to the March 26, 2007 Final Office Action, was filed on June 26, 2007. The instant Appeal Brief is being timely submitted within two months of the filing of a Notice of Appeal, i.e., by August 27, 2007 (August 26, 2007 being a Sunday).

Payment for the requisite fee under 37 C.F.R. 41.20(b)(2) in the amount of \$ 500.00 for the filing of the Appeal Brief is being filed concurrently herewith. No extensions of time are believed to be required. If for any reason a necessary fee is required for consideration of the instant paper, authorization is hereby given to charge the fee for the Appeal Brief and any necessary extension of time fees to Deposit Account No. 19-0089.

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(I) REAL PARTY IN INTEREST

The real party in interest is Beiersdorf AG by an assignment recorded in the U.S. Patent and Trademark Office on August 10, 2004 at Reel 015060 and Frame 0087 in the instant US Patent Application No. 10/712,131.

(II) RELATED APPEALS AND INTERFERENCES

No related appeals and/or interferences are pending.

(III) STATUS OF THE CLAIMS

Claims 12-14, 16-18, 20-26 and 28-33 are the only pending claims. Claims 20, 21, 32 and 33 have been withdrawn by the Examiner on the basis of a restriction requirement. Claims 12-14, 16-18, 22-26 and 28-31 stand finally rejected and are the subject of the instant Appeal.

(IV) STATUS OF THE AMENDMENTS

An Amendment under 37 C.F.R. § 1.116 was filed on May 29, 2007 requesting reconsideration of the finally rejected claims. Appellant submits that no amendments after final have been filed. An Advisory Action was issued on June 20, 2007 indicating that the Amendment will be entered for purposes of appeal and that the Amendment was considered but did not place the application in condition for allowance.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER

A. The Claimed Subject Matter

1. INDEPENDENT CLAIM 12

With reference to page 7, line 11 (paragraph [0029]) through page 12, line 5 (paragraph [0060]) of the verified English translation of German language application as filed submitted on May

29, 2007, and to the figures, and by way of non-limiting example, the invention provides for a relockable, rectangular-shaped folding box comprising a first side panel (1) having a perforated zone (13) formed therein. A second side panel (3) opposes the first side panel (1). A pair of opposing lateral side panels (2 and 4) connect the first side panel (1) to the second side panel (3). A bottom closure (20) comprises two bottom closing flaps (11 and 31) and two bottom dust flaps (21 and 41). A top closure (30) comprises at least one top closing flap (12) and two top dust flaps (22 and 42). An insertion tab (5) is hinged to one of the lateral side panels (2 and 4) (in Fig. 1 tab 5 is hinged to later side panel 4) and is fixedly attached (see Fig. 3) to the perforated zone (13) formed in the first side panel (1) such that upon removal (see Fig. 8) of the perforated zone (13), the insertion tab (5) remains fixedly attached (see Fig. 8) to the perforated zone (13) and the box is relockable by insertion of the insertion tab (5) into the box (see page 10, lines 18-19 or paragraph [0052]). A two-layer hanger (50) includes a first hanging tab (33) comprising an aperture (37) and a second hanging tab (34) comprising an aperture (37). The first and second hanging tabs (33 and 34) are hinged (e.g., via 32 in Fig. 1) to a top of either the first side panel (1) or the second side panel (3) (in Fig. 1 they are hinged to second side panel (3)) and operatively positioned for pressing together (see Fig. 2) such that the apertures (37) of the hanging tabs (33 and 34) substantially coincide to form the two-layer hanger (50). See Fig. 3.

2. INDEPENDENT CLAIM 22

With reference to page 7, line 11 (paragraph [0029]) through page 12, line 5 (paragraph [0060]) of the verified English translation of German language application as filed submitted on May 29, 2007, and to the figures, and by way of non-limiting example, the invention provides for a

relockable, rectangular-shaped folding box comprising a first side panel (1). A second side panel (3) opposes the first side panel (1). A pair of opposing lateral side panels (2 and 4) connect the first side panel (1) to the second side panel (3). A bottom closure (20) comprises two bottom closing flaps (11 and 31) and two bottom dust flaps (21 and 41). A top closure (30) comprises a top closing flap (12) and two top dust flaps (22 and 42). A two-layer hanger (50) includes a first hanging tab (33) comprising an aperture (37) and a second hanging tab (34) comprising an aperture (37). The first hanging tab (33) is hinged (e.g., via 32 in Fig. 1) to a top of one of the first (1) and second (3) side panels (in Fig. 1 tab 33 is hinged to second side panel (3)). The second hanging tab (34) is hinged to the first hanging tab (33) (compare Figs. 1 and 2). The hanging tabs (33 and 34) are operatively positioned for pressing together (see Fig. 2) such that the aperture (37) of each hanging tab (33 and 34) substantially coincides to form the two-layer hanger (50) (see Fig. 3). An insertion tab (5) is hinged to one of the lateral side panels (2 and 4) (in Fig. 1 tab 5 is hinged to later side panel 4) and is fixedly attached (see Fig. 3) to a perforated zone (13) formed in one of the first and second side panels (1 and 3) (in Fig. 1 zone 13 is formed in panel 1) such that upon removal (see Fig. 8) of the perforated zone (13), the insertion tab (5) remains fixedly attached (see Fig. 8) to the perforated zone (13) and the box is relockable by insertion of the insertion tab (5) into the box (see page 10, lines 18-19 or paragraph [0052]).

3. INDEPENDENT CLAIM 28

With reference to page 7, line 11 (paragraph [0029]) through page 12, line 5 (paragraph [0060]) of the verified English translation of German language application as filed submitted on May 29, 2007, and to the figures, and by way of non-limiting example, the invention provides for a

punched blank for producing a relockable, rectangular-shaped folding box, wherein the punched blank comprises in laterally hinged relationship, a first side panel (1) having a perforated zone (13), a second side panel (3), and two lateral side panels (2 and 4). A bottom closing flap (11 and 31) is pivotally joined to the bottom of each of the first and second side panels (1 and 3). A bottom dust flap (21 and 41) is pivotally joined to the bottom of each of the lateral side panels (2 and 4). A top closing flap (12) is pivotally joined to the top of the first side panel (1). A dust flap (22 and 42) is pivotally joined to the top of each of the lateral side panels (2 and 4). A first hanging tab (33) comprises an aperture (37) is pivotally joined to the top of the second side panel (3). A second hanging tab (34) comprises an aperture (37) is pivotally joined to the first hanging tab (33). An insertion tab (5) is laterally hinged to one of the lateral side panels (2 and 4) (in Fig. 1 tab 5 is laterally hinged to lateral side panel 4) and is operatively positioned for contacting the perforated zone 13. See Fig. 3.

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Whether claims 12-14, 16, 17, 22, 25 and 26 are improperly rejected under 35 U.S.C. § 102(b) as anticipated by US Patent No. 4,949,845 to DIXON.

(B) Whether claims 12, 16 and 22 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over DE 44 23 468 in view of DE 100 15 053.

(C) Whether claims 12, 13, 16, 22 and 25 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over US Patent No. 2,038,893 to DAVIDSON in view of DE 100 15 053.

(D) Whether claims 17, 18, 23, 24 and 28-31 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over either DE 44 23 468 and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ, or US Patent No. 2,038,893 to DAVIDSON and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ.

(E) Whether claim 18 is improperly rejected under 35 U.S.C. § 103(a) as unpatentable over US Patent No. 4,949,845 to DIXON alone.

(VII) ARGUMENTS REGARDING PRIOR ART REJECTIONS

(A) The rejection of claims 12-14, 16, 17, 22, 25 and 26 under 35 U.S.C. § 102(b) as anticipated by US Patent No. 4,949,845 to DIXON is in error and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 12 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 12 under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 4,949,845 to DIXON is in error and should be reversed.

The Examiner asserts that DIXON discloses the combination of features recited in claim 12. Appellant disagrees.

Appellant acknowledges the Examiner's assertion that reference number 40 of DIXON can arguably be characterized as the recited insertion tab and that member 46 can be arguably characterized as the recited perforated zone. Even assuming, arguendo, that Fig. 9 of DIXON teaches that the so-called insertion tab 40 is insertable into the box. However, Appellant submits that the Examiner has failed to consider what DIXON actually discloses, and is taking inconsistent positions as to what DIXON discloses.

The Examiner identifies the recited lateral side panels in DIXON as members 18 and 20. Using such an interpretation, however, the Examiner cannot also assert that DIXON teaches the recited bottom closure. This is because DIXON specifically teaches that the panel 20 "forms the bottom wall" (see col. 3, line 48). If panel 20 is properly interpreted as the bottom closure (as DIXON clearly discloses), then the Examiner must acknowledge that panels 18 and 20 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Final Office Action is conspicuous for its failure to even identify the

bottom closure in DIXON.

The Examiner's interpretation is even more problematic because it also ignores the fact that DIXON identifies the panel 18 (one of the so-called lateral side panels) as the "top wall" (see col. 3, line 9). If panel 18 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 18 and 20 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

Appellant emphasizes that, in Fig. 1 of DIXON, the top wall 18 is the panel to which the so-called insertion tab 40 is hinged. This is not the case, however, in the invention which clearly recites that the two-layered hanger (50) is hinged to a top of either the first or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Clearly, in DIXON, the two layered hanger 44/42 is hinged to a bottom of what the Examiner has identified as the perforated zone 46 (see Fig. 1 of DIXON). The invention, in contrast, clearly provides that the two-layered hanger is hinged to a top of one of the first or second side panels.

Appellant acknowledges that the Examiner may broadly interpret the disclosure of a prior art document and the claim language at issue. However, the Examiner is not free to ignore or mischaracterize the clear language of the prior art document and the claims, and is certainly not free to take an inconsistent reading of such a disclosure, and in particular, that of DIXON. Finally, Appellant emphasizes that it is incumbent on the Examiner to identify each and every feature recited in the claims in the reference which is applied. This has not been done in this case. As such, a *prima facie* case of anticipation has not been set forth.

Thus, the above noted rejection of claim 12 is improper for the reasons stated above and

should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 22 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 22 under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 4,949,845 to DIXON is in error and should be reversed.

The Examiner asserts that DIXON discloses the combination of features recited in claim 12. Appellant disagrees.

Appellant acknowledges the Examiner's assertion that reference number 40 of DIXON can arguably be characterized as the recited insertion tab and that member 46 can be arguably characterized as the recited perforated zone. Even assuming, arguendo, that Fig. 9 of DIXON teaches that the so-called insertion tab 40 is insertable into the box. However, Appellant submits that the Examiner has failed to consider what DIXON actually discloses, and is taking inconsistent positions as to what DIXON discloses.

The Examiner identifies the recited lateral side panels in DIXON as members 18 and 20. Using such an interpretation, however, the Examiner cannot also assert that DIXON teaches the recited bottom closure. This is because DIXON specifically teaches that the panel 20 "forms the bottom wall" (see col. 3, line 48). If panel 20 is properly interpreted as the bottom closure (as DIXON clearly discloses), then the Examiner must acknowledge that panels 18 and 20 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Final Office Action is conspicuous for its failure to even identify the bottom closure in DIXON.

The Examiner's interpretation is even more problematic because it also ignores the fact that

DIXON identifies the panel 18 (one of the so-called lateral side panels) as the “top wall” (see col. 3, line 9). If panel 18 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 18 and 20 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

Appellant emphasizes that, in Fig. 1 of DIXON, the top wall 18 is the panel to which the so-called insertion tab 40 is hinged. This is not the case, however, in the invention which clearly recites that the two-layered hanger (50) is hinged to a top of either the first or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Clearly, in DIXON, the two layered hanger 44/42 is hinged to a bottom of what the Examiner has identified as the perforated zone 46 (see Fig. 1 of DIXON). The invention, in contrast, clearly provides that the two-layered hanger is hinged to a top of one of the first or second side panels.

Appellant acknowledges that the Examiner may broadly interpret the disclosure of a prior art document and the claim language at issue. However, the Examiner is not free to ignore or mischaracterize the clear language of the prior art document and the claims, and is certainly not free to take an inconsistent reading of such a disclosure, and in particular, that of DIXON. Finally, Appellant emphasizes that it is incumbent on the Examiner to identify each and every feature recited in the claims in the reference which is applied. This has not been done in this case. As such, a *prima facie* case of anticipation has not been set forth.

Thus, the above noted rejection of claim 22 is improper for the reasons stated above and should be reversed.

THE REJECTION OF DEPENDENT CLAIM 17 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 17 under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 4,949,845 to DIXON is in error and should be reversed.

Claim 17 depends from claim 16 and further recites:

wherein said first hanging tab is hinged to one of said first and second side panels via a cover flap.

The Examiner asserts that panel 46 is properly interpreted as the recited cover flap. At first blush, the assertion appears to have some merit because panel 46 functions to hinge-connect the hanging tabs 42/44 to the panel 22. However, such an interpretation is clearly improper because the Examiner has asserted that panel 46 also constitutes the recited perforated zone. Panel 46 simply cannot be both the recited perforated zone and the cover flap at least because these features are recited as two different features in claims 12, 16 and 17. Furthermore, claims 12, 16 and 17 recite that the perforated zone is formed in the first side panel and the closure flap functions to hinge the first hanging tab. Panel 46 of DIXON is hinged to panel 22 and is not formed in the panel 22. Furthermore, panel 46 does not function to hinge panel 44 to panel 22 because it functions only as a perforated zone (see Fig. 8 of DIXON).

Thus, the above noted rejection of claim 17 is improper for the reasons stated above and should be reversed.

(B) The rejection of claims 12, 16 and 22 under 35 U.S.C. § 103(a) as unpatentable over DE 44 23 468 in view of DE 100 15 053 is in error and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 12 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 12 under 35 U.S.C. § 103(a) as being unpatentable over DE 44 23 468 in view of DE 100 15 053 is in error and should be reversed.

The Examiner acknowledged that DE '468 lacks, among other features, the recited two-layered hanger hinged to a top of one of the side panels. However, the Examiner asserted that this feature is disclosed in DE '053, and that it would have been obvious to one of ordinary skill in the art to combine the teachings of these documents. Appellant respectfully disagrees with the Examiner's assertions and traverses this rejection.

Notwithstanding the Office Action assertions as to each of DE '468 and DE '053 discloses or suggests, Appellant submits that no proper combination of DE '468 and DE '053 discloses, or even suggests the combination of features recited in claim 12.

As regards DE '468, Appellant acknowledges that DE '468 teaches a bottom closure 5, a top closure 19, and an insertion tab 9 that is fixable to a perforated zone of front side panel 4 (see Figs. 1-4). Even assuming, arguendo, that Fig. 4 of DE '468 is at least suggestive of inserting insertion tab 9 into the box. However, Appellant submits that the Examiner has failed to consider what DE '468 actually discloses, and is taking inconsistent positions as to what DE '468 discloses.

The Examiner apparently believes that the recited lateral side panels in DE '468 are members 5 and 19. Using such an interpretation, however, the Examiner cannot also assert that DE '468 teaches the recited bottom closure. This is because DE '468 specifically shows that the panel 5

forms the bottom wall (see Figs. 3 and 4). If panel 5 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Office Action is conspicuous for its failure to even identify the bottom closure in DE '468.

The Examiner's interpretation is also problematic because it also ignores the fact that DE '468 shows the panel 19 (one of the alleged lateral side panels) as a top wall (see Figs. 3 and 4). If panel 19 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

DE '053 does not and cannot cure the deficiencies of DE '468. First, there is no suggestion in either document to place the hanger of DE '053 on any particular portion of DE '468. The most obvious position, in fact, might be to hinge the hanger 32 of DE '043 on the top wall 19 of DE '468. The only other apparent option would be to hinge it to panel 4 (which would not work because the top of the panel 4 has the perforated zone). However, this modification would not result in anything approaching the invention.

The invention clearly recites that the two-layered hanger is hinged to a top of one of the first or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Again, hinging panel 32 of DE '053 to the top of the panel 4 of DE '468 would make no sense because the top of the panel 4 has the perforated zone, which is removed upon opening of the package (see Fig. 4 of DE '468). Furthermore, while it is evident that DE '053 teaches to use a pair of opposing lateral side panels 13 and 14/15, DE '053 does not teach or suggest hinging any insertion tab to any of these

panels 13 and 14/15.

Appellant submits that there is no reason or basis for modifying DE 468 and DE '053 in a manner which would render obvious Appellant's invention, and additionally, Appellant submits that there is no rationale disclosed or suggested in the prior art to modify the applied references in the manner suggested by the Examiner. The Examiner's opinion does not provide a proper basis for these features or for modifying these documents in the manner suggested by the Examiner. Therefore, Appellant submits that the invention as recited in at least independent claim 12 is not rendered obvious by any reasonable inspection and interpretation of the disclosure of the applied references.

Thus, the above noted rejection of claim 12 is improper for the reasons stated above and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 22 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 22 under 35 U.S.C. § 103(a) as being unpatentable over DE 44 23 468 in view of DE 100 15 053 is in error and should be reversed.

The Examiner acknowledged that DE '468 lacks, among other features, the recited two-layered hanger hinged to a top of one of the side panels. However, the Examiner asserted that this feature is disclosed in DE '053, and that it would have been obvious to one of ordinary skill in the art to combine the teachings of these documents. Appellant respectfully disagrees with the Examiner's assertions and traverses this rejection.

Notwithstanding the Office Action assertions as to each of DE '468 and DE '053 discloses or suggests, Appellant submits that no proper combination of DE '468 and DE '053 discloses, or even

suggests the combination of features recited in claim 22.

As regards DE '468, Appellant acknowledges that DE '468 teaches a bottom closure 5, a top closure 19, and an insertion tab 9 that is fixable to a perforated zone of front side panel 4 (see Figs. 1-4). Even assuming, arguendo, that Fig. 4 of DE '468 is at least suggestive of inserting insertion tab 9 into the box. However, Appellant submits that the Examiner has failed to consider what DE '468 actually discloses, and is taking inconsistent positions as to what DE '468 discloses.

The Examiner apparently believes that the recited lateral side panels in DE '468 are members 5 and 19. Using such an interpretation, however, the Examiner cannot also assert that DE '468 teaches the recited bottom closure. This is because DE '468 specifically shows that the panel 5 forms the bottom wall (see Figs. 3 and 4). If panel 5 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Office Action is conspicuous for its failure to even identify the bottom closure in DE '468.

The Examiner's interpretation is also problematic because it also ignores the fact that DE '468 shows the panel 19 (one of the alleged lateral side panels) as a top wall (see Figs. 3 and 4). If panel 19 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

DE '053 does not and cannot cure the deficiencies of DE '468. First, there is no suggestion in either document to place the hanger of DE '053 on any particular portion of DE '468. The most obvious position, in fact, might be to hinge the hanger 32 of DE '043 on the top wall 19 of DE '468.

The only other apparent option would be to hinge it to panel 4 (which would not work because the top of the panel 4 has the perforated zone). However, this modification would not result in anything approaching the invention.

The invention clearly recites that the two-layered hanger is hinged to a top of one of the first or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Again, hinging panel 32 of DE '053 to the top of the panel 4 of DE '468 would make no sense because the top of the panel 4 has the perforated zone, which is removed upon opening of the package (see Fig. 4 of DE '468). Furthermore, while it is evident that DE '053 teaches to use a pair of opposing lateral side panels 13 and 14/15, DE '053 does not teach or suggest hinging any insertion tab to any of these panels 13 and 14/15.

Appellant submits that there is no reason or basis for modifying DE 468 and DE '053 in a manner which would render obvious Appellant's invention, and additionally, Appellant submits that there is no rationale disclosed or suggested in the prior art to modify the applied references in the manner suggested by the Examiner. The Examiner's opinion does not provide a proper basis for these features or for modifying these documents in the manner suggested by the Examiner. Therefore, Appellant submits that the invention as recited in at least independent claim 12 is not rendered obvious by any reasonable inspection and interpretation of the disclosure of the applied references.

Thus, the above noted rejection of claim 22 is improper for the reasons stated above and should be reversed.

(C) The rejection of claims 12, 13, 16, 22 and 25 under 35 U.S.C. § 103(a) as unpatentable over US Patent No. 2,038,893 to DAVIDSON in view of DE 100 15 053 is in error and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 12 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 12 under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 2,038,893 to DAVIDSON in view of DE 100 15 053 is in error and should be reversed.

The Examiner acknowledged that DAVIDSON lacks, among other features, the recited two-layered hanger hinged to a top of one of the side panels. However, the Examiner asserted that this feature is disclosed in DE '053, and that it would have been obvious to one of ordinary skill in the art to combine the teachings of these documents. Appellant respectfully disagrees with the Examiner's assertions and traverses this rejection.

Notwithstanding the Office Action assertions as to each of DAVIDSON and DE '053 discloses or suggests, Appellant submits that no proper combination of DAVIDSON and DE '053 discloses, or even suggests the combination of features recited in claim 12.

Regarding DAVIDSON, Appellant acknowledges that DAVIDSON teaches a bottom closure 23, a top closure 25, and an insertion tab 26 that is fixable to perforated zone 38 of front side panel 22 (see Figs. 1-3). Even assuming, arguendo, that Fig. 3 of DAVIDSON is at least suggestive of inserting insertion tab 26 into the box. However, Appellant submits that the Examiner has failed to consider what DAVIDSON actually discloses, and is taking inconsistent positions as to what DAVIDSON discloses.

The Examiner apparently believes that the recited lateral side panels in DAVIDSON are members 23 and 25. Using such an interpretation, however, the Examiner cannot also assert that

DAVIDSON teaches the recited bottom closure. This is because DAVIDSON specifically shows that the panel 23 forms the bottom wall (see col. 2, line 20). If panel 23 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Final Office Action is conspicuous for its failure to even identify the bottom closure in DAVIDSON.

The Examiner's interpretation is also problematic because it also ignores the fact that DAVIDSON shows the panel 25 (one of the alleged lateral side panels) as a top wall (see col. 2, line 21). If panel 25 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

DE '053 does not and cannot cure the deficiencies of DAVIDSON. First, there is no suggestion in either document to place the hanger of DE '053 on any particular portion of DAVIDSON. The most obvious position, in fact, might be to hinge the hanger 32 of DE '043 on the top wall 25 of DAVIDSON. The only other apparent option would be to hinge it to panel 22 (which would not work because the top of the panel 22 has the perforated zone 38). However, this modification would not result in anything approaching the invention.

The invention clearly recites that the two-layered hanger is hinged to a top of one of the first or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Again, hinging panel 32 of DE '053 to the top of the panel 22 of DAVIDSON would make no sense because the top of the panel 22 has the perforated zone 38, which is removed upon opening of the package (see Fig. 3

of DAVIDSON). Furthermore, while it is evident that DE '053 teaches to use a pair of opposing lateral side panels 13 and 14/15, DE '053 does not teach or suggest hinging any insertion tab to any of these panels 13 and 14/15.

Thus, the above noted rejection of claim 12 is improper for the reasons stated above and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 22 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 22 under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 2,038,893 to DAVIDSON in view of DE 100 15 053 is in error and should be reversed.

The Examiner acknowledged that DAVIDSON lacks, among other features, the recited two-layered hanger hinged to a top of one of the side panels. However, the Examiner asserted that this feature is disclosed in DE '053, and that it would have been obvious to one of ordinary skill in the art to combine the teachings of these documents. Appellant respectfully disagrees with the Examiner's assertions and traverses this rejection.

Notwithstanding the Office Action assertions as to each of DAVIDSON and DE '053 discloses or suggests, Appellant submits that no proper combination of DAVIDSON and DE '053 discloses, or even suggests the combination of features recited in claim 22.

Regarding DAVIDSON, Appellant acknowledges that DAVIDSON teaches a bottom closure 23, a top closure 25, and an insertion tab 26 that is fixable to perforated zone 38 of front side panel 22 (see Figs. 1-3). Even assuming, arguendo, that Fig. 3 of DAVIDSON is at least suggestive of inserting insertion tab 26 into the box. However, Appellant submits that the Examiner has failed to consider what DAVIDSON actually discloses, and is taking inconsistent positions as to what

DAVIDSON discloses.

The Examiner apparently believes that the recited lateral side panels in DAVIDSON are members 23 and 25. Using such an interpretation, however, the Examiner cannot also assert that DAVIDSON teaches the recited bottom closure. This is because DAVIDSON specifically shows that the panel 23 forms the bottom wall (see col. 2, line 20). If panel 23 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel. Indeed, the Final Office Action is conspicuous for its failure to even identify the bottom closure in DAVIDSON.

The Examiner's interpretation is also problematic because it also ignores the fact that DAVIDSON shows the panel 25 (one of the alleged lateral side panels) as a top wall (see col. 2, line 21). If panel 25 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited pair of opposing lateral side panels connecting said first side panel to said second side panel.

DE '053 does not and cannot cure the deficiencies of DAVIDSON. First, there is no suggestion in either document to place the hanger of DE '053 on any particular portion of DAVIDSON. The most obvious position, in fact, might be to hinge the hanger 32 of DE '043 on the top wall 25 of DAVIDSON. The only other apparent option would be to hinge it to panel 22 (which would not work because the top of the panel 22 has the perforated zone 38). However, this modification would not result in anything approaching the invention.

The invention clearly recites that the two-layered hanger is hinged to a top of one of the first

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or second side panels (i.e., ref. Nos. 1 and 3 in Fig. 1 of the instant application). Again, hinging panel 32 of DE '053 to the top of the panel 22 of DAVIDSON would make no sense because the top of the panel 22 has the perforated zone 38, which is removed upon opening of the package (see Fig. 3 of DAVIDSON). Furthermore, while it is evident that DE '053 teaches to use a pair of opposing lateral side panels 13 and 14/15, DE '053 does not teach or suggest hinging any insertion tab to any of these panels 13 and 14/15.

Thus, the above noted rejection of claim 22 is improper for the reasons stated above and should be reversed.

(D) The rejection of claims 17, 18, 23, 24 and 28-31 under 35 U.S.C. § 103(a) as unpatentable over either DE 44 23 468 and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ, or US Patent No. 2,038,893 to DAVIDSON and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ is in error and should be reversed.

THE REJECTION OF INDEPENDENT CLAIM 28 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 28 under 35 U.S.C. § 103(a) as being unpatentable over either DE 44 23 468 and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ, or US Patent No. 2,038,893 to DAVIDSON and DE 100 15 053, and further in view of US Patent No. 6,279,819 to SCHULTZ, is in error and should be reversed.

The Examiner acknowledged that DAVIDSON or DE '468 as modified by DE '053 lacks, among other features, the recited features of claim 28. However, the Examiner asserted that these features are disclosed in SCHULTZ, and that it would have been obvious to one of ordinary skill in the art to combine the teachings of these documents. Appellant respectfully disagrees with the Examiner's assertions and traverses this rejection.

Notwithstanding the Office Action assertions as to each of DAVIDSON, DE '468, DE '053 and SCHULTZ discloses or suggests, Appellant submits that no proper combination of these documents discloses, or even suggests, for example, the combination of features recited in claim 28.

As explained above, DE '468 teaches a bottom closure 5, a top closure 19, and an insertion tab 9 that is fixable to perforated zone of front side panel 4 (see Figs. 1-4), and Fig. 4 of DE '468 appears at least suggestive of inserting insertion tab 9 into the box. However, Appellant submits that the Examiner has failed to consider what DE '468 actually discloses, and is taking inconsistent positions as to what DE '468 discloses.

The Examiner apparently believes that the recited lateral side panels in DE '468 are members 5 and 19. Using such an interpretation, however, the Examiner cannot also assert that DE '468 teaches the recited bottom closure. This is because DE '468 specifically shows that the panel 5 forms the bottom wall (see Figs. 3 and 4). If panel 5 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited two lateral side panels is hinged relationship to the first side panel and the second side panel. Indeed, the Office Action is conspicuous for its failure to even identify the bottom closure in DE '468.

The Examiner's interpretation is also problematic because it also ignores the fact that DE '468 shows the panel 19 (one of the alleged lateral side panels) as a top wall (see Figs. 3 and 4). If panel 19 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 5 and 19 cannot be characterized as the recited two lateral side panels is hinged relationship to the first side panel and the second side panel.

As regards DAVIDSON , Appellant acknowledges that DAVIDSON teaches a bottom closure 23, a top closure 25, and an insertion tab 26 that is fixable to perforated zone 38 of front side panel 22 (see Figs. 1-3). Even assuming, arguendo, that Fig. 3 of DAVIDSON is at least suggestive of inserting insertion tab 26 into the box. However, Appellant submits that the Examiner has failed to consider what DAVIDSON actually discloses, and is taking inconsistent positions as to what DAVIDSON discloses.

The Examiner apparently believes that the recited lateral side panels in DAVIDSON are members 23 and 25. Using such an interpretation, however, the Examiner cannot also assert that DAVIDSON teaches the recited bottom closure. This is because DAVIDSON specifically shows

that the panel 23 forms the bottom wall (see col. 2, line 20). If panel 23 is properly interpreted as the bottom closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited two lateral side panels is hinged relationship to the first side panel and the second side panel. Indeed, the Office Action is conspicuous for its failure to even identify the bottom closure in DAVIDSON.

The Examiner's interpretation is also problematic because it also ignores the fact that DAVIDSON shows the panel 25 (one of the alleged lateral side panels) as a top wall (see col. 2, line 21). If panel 25 is properly interpreted as the top closure, then the Examiner must acknowledge that panels 23 and 25 cannot be characterized as the recited two lateral side panels is hinged relationship to the first side panel and the second side panel.

DE '053 does not and cannot cure the deficiencies of either DE '468 or DAVIDSON. As explained above, there is no suggestion in either document to place the hanger of DE '053 on any particular portion of DAVIDSON or DE '468. The most obvious position, in fact, might be to hinge the hanger 32 of DE '043 on the top wall 25 of DAVIDSON or on the top wall 19 of DE '468. However, as explained above, this would not work. Furthermore, while it is evident that DE '053 teaches to use a pair of opposing lateral side panels 13 and 14/15, DE '053 does not teach or suggest hinging any insertion tab to any of these panels 13 and 14/15.

SCHULTZ does not and cannot cure the deficiencies of either DE '468, DAVIDSON or DE '053. First, the Examiner has not alleged that SCHULTZ teaches any feature which Appellant has pointed out is missing in each of DE '468, DAVIDSON or DE '053. Second, there is no suggestion in any of the applied documents to place the hanger and closure flap of SCHULTZ on any particular

portion of DAVIDSON or DE '468. The most obvious position, in fact, might be to hinge the hanger 312/313 of SCHULTZ on the top wall 25 of DAVIDSON or on the top wall 19 of DE '468. However, as explained above, this would not work. Furthermore, while it is evident that SCHULTZ teaches to use a pair of opposing lateral side panels 13 and 14, SCHULTZ does not appear to teach or suggest hinging an insertion tab to any of these panels 13 and 14.

Thus, the above noted rejection of claim 28 is improper for the reasons stated above and should be reversed.

The above-noted dependent claims stand or fall with the claims from which they depend. Appellant submits that the rejection of these claims is improper at least for the reasons noted above with regard to the claims from which they depend.

(E) The rejection of claim 18 under 35 U.S.C. § 103(a) as unpatentable over DIXON alone is in error and should be reversed.


The above-noted claim stands or falls with the claims from which it depends. Appellant submits that the rejection of this claim is improper at least for the reasons noted above with regard to the claims from which it depends.

CONCLUSION

Each of claims 12-14, 16-18, 22-26 and 28-31 are patentable under 35 U.S.C. §§ 102 and 103. Specifically, the applied art of record, even in properly combined (which Appellant submits is improper), fails to disclose or suggest the unique combination of features recited in Appellant's claims 12-14, 16-18, 22-26 and 28-31. Accordingly, Appellant respectfully requests that the Board reverse the decision of the Examiner to finally reject claims 12-14, 16-18, 22-26 and 28-31 under 35 U.S.C. §§ 102 and 103, and remand the application to the Examiner for withdrawal of the above-noted rejections. The Commissioner is hereby authorized to charge any additional fees concerning the application to Deposit Account No. 19-0089.

Respectfully submitted,
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Attachments: Claims Appendix
Evidence Appendix;
Related Proceedings Appendix

(VIII) CLAIMS ON APPEAL

12. A relockable, rectangular-shaped folding box comprising:
- a first side panel having a perforated zone formed therein;
 - a second side panel opposing said first side panel;
 - a pair of opposing lateral side panels connecting said first side panel to said second side panel;
 - a bottom closure comprising two bottom closing flaps and two bottom dust flaps;
 - a top closure comprising at least one top closing flap and two top dust flaps;
 - an insertion tab hinged to one of said lateral side panels and fixedly attached to the perforated zone formed in said first side panel such that upon removal of the perforated zone, the insertion tab remains fixedly attached to the perforated zone and said box is relockable by insertion of said insertion tab into said box; and
 - a two-layer hanger comprising a first hanging tab comprising an aperture and a second hanging tab comprising an aperture, wherein said first and second hanging tabs are hinged to a top of either said first side panel or said second side panel and operatively positioned for pressing together such that the apertures of the hanging tabs substantially coincide to form the two-layer hanger.

13. The relockable, rectangular-shaped folding box of claim 12, wherein the dimensions of said insertion tab are greater than the dimensions of said perforated zone.

14. The relockable, rectangular-shaped folding box of claim 12, wherein said top and bottom dust flaps are attached to the same lateral side panel as the insertion tab and have rounded edges.

16. The relockable, rectangular-shaped folding box of claim 12, wherein said second hanging tab is hinged to said first hanging tab.

17. The relockable, rectangular-shaped folding box of claim 16, wherein said first hanging tab is hinged to one of said first and second side panels via a cover flap.

18. The relockable, rectangular-shaped folding box of claim 17, wherein said cover flap has a width of 55 to 60% of the width of the top closing flap.

22. A relockable, rectangular-shaped folding box comprising:
a first side panel;
a second side panel opposing said first side panel;
a pair of opposing lateral side panels connecting said first side panel to said second side panel;
a bottom closure comprising two bottom closing flaps and two dust flaps;
a top closure comprising a top closing flap and two dust flaps;
a two-layer hanger comprising a first hanging tab comprising an aperture and a second hanging tab comprising an aperture, wherein said first hanging tab is hinged to a top of one of said first and second side panels, and said second hanging tab is hinged to said first hanging tab, said hanging tabs operatively positioned for pressing together such that the aperture of each hanging tab substantially coincide to form the two-layer hanger; and
an insertion tab hinged to one of said lateral side panels and fixedly attached to a perforated zone formed in one of said first and second side panels such that upon removal of the perforated zone, the insertion tab remains fixedly attached to the perforated zone and said box is relockable by insertion of said insertion tab into said box.

23. The relockable, rectangular-shaped folding box of claim 22, wherein said first hanging tab is hinged to one of said first and second side panels via a cover flap adapted for overlaying, and being fixedly attached to, said top closing flap.

24. The relockable, rectangular-shaped folding box of claim 23, wherein said cover flap has a width of 55 to 60% of the width of the top closing flap.

25. The relockable, rectangular-shaped folding box of claim 22, wherein the dimensions of said insertion tab are greater than the dimensions of said perforated zone.

26. The relockable, rectangular-shaped folding box of claim 22, wherein said top and bottom dust flaps attached to the same lateral side panel as the insertion tab have rounded edges.

28. A punched blank for producing a relockable, rectangular-shaped folding box, wherein said punched blank comprises:

in laterally hinged relationship, a first side panel having a perforated zone, a second side panel, and two lateral side panels;

a bottom closing flap pivotally joined to the bottom of each of said first and second side panels, and a bottom dust flap pivotally joined to the bottom of each of said lateral side panels;

a top closing flap pivotally joined to the top of said first side panel, and a dust flap pivotally joined to the top of each of said lateral side panels;

a first hanging tab comprising an aperture pivotally joined to the top of said second side panel, and a second hanging tab comprising an aperture pivotally joined to said first hanging tab; and

an insertion tab laterally hinged to one of said lateral side panels and operatively positioned for contacting said perforated zone.

29. The punched blank of claim 28, wherein said first hanging tab is pivotally joined to said second side panel via a cover flap.

30. The punched blank of claim 29, wherein said cover flap has a width of 55 to 60% of the width of the top closing flap.

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31. The punched blank of claim 28, wherein the dimensions of said insertion tab are greater than the dimensions of said perforated zone.

(IX) EVIDENCE APPENDIX

This section lists evidence submitted pursuant to 35 C.F.R. §§1.130, 1.131, or 1.132, or any other evidence entered by the Examiner and relied upon by Appellant in this appeal, and provides for each piece of evidence a brief statement setting forth where in the record that evidence was entered by the Examiner. Copies of each piece of evidence are provided as required by 35 C.F.R. §41.37(c)(ix).

NO.	EVIDENCE	BRIEF STATEMENT SETTING FORTH WHERE IN THE RECORD THE EVIDENCE WAS ENTERED BY THE EXAMINER
1	N/A	N/A

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(X) RELATED PROCEEDINGS APPENDIX

Pursuant to 35 C.F.R. §41.37(c)(x), copies of the following decisions rendered by a court of the Board in any proceeding identified above under 35 C.F.R. §41.37(c)(1)(ii) are enclosed herewith.

NO.	TYPE OF PROCEEDING	REFERENCE NO.	DATE
1	N/A	N/A	N/A